Supreme Court, U.S.
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No. 01-1220

In The

Supreme Court of the United States

WILLIAM H. WALKER,

Petitioner,

v.

THOMAS BAIN, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITIONER'S REPLY MEMORANDUM

DERIC J. BOMAR
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
222 N. LaSalle, Suite 2600
Chicago, IL 60601
(312) 609-7726

Counsel of Record for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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A. The Courts Of Appeals Are Not Uniform In Their Resolution Of The Issue Of The Constitutionality Of Section 1997e(d)(2).

The United States incorrectly asserts in its Brief in Opposition that "[e]very court of appeals to consider the issue [of whether 42 U.S.C. § 1997e(d)(2) satisfies the rational basis test] has held that Section 1997e(d)(2) rationally furthers a legitimate government purpose" (U.S. Brief in Opposition at p. 6). This is untrue. The Third Circuit Court of Appeals considered the issue and failed to reach a conclusion. Specifically, the *en banc* panel of the Third Circuit equally split as to Section 1997e(d)(2)'s constitutionality. *Collins v. Montgomery County Bd. Of Prison Inspectors*, 176 F.3d 679, 686 (3d Cir. 1999) (*en banc*). It affirmed the district court's decision only because of the divided nature of the *en banc* panel. *Id.* Thus, the courts of appeals are not uniform in resolving the issue of the constitutionality of Section 1997e(d)(2).

District courts continue to question the constitutionality of Section 1997e(d)(2). In *Robbins v. Chronister*, ___ F. Supp.3d ___, No. 97-3489, 2002 WL 356331 (D.Kan. March 1, 2002), the court expressed "grave concerns regarding the constitutionality of the fee limitation provision as applied to plaintiff." *Id.* at *8. The specific issue presented in *Robbins* was whether the PLRA's fee limitation provisions should be applied to the plaintiff even though his cause of action arose from events unrelated to prison and that occurred prior to his incarceration. While purporting not to resolve the constitutional issue, the court held that it could "conceive of no rational justification for distinguishing between prisoner and non-

prisoner litigants based upon when they file their lawsuits." *Id.* at *7. In holding that the fee limitation provisions did not apply to the plaintiff, the court applied the "absurdity" principle and held that Congress did not intend the PLRA's attorney's fee limitations to apply to individuals with meritorious civil rights claims who happen to be incarcerated at the time they file their complaints. For this reason, although the PLRA's fee limitations literally applied to the plaintiff, the Court held that literal application of Section 1997e(d)(2) to the plaintiff would be absurd and disregarded the fee limitations.

The holding in *Robbins* reinforces that Section 1997e(d)(2) of the PLRA is irrational and absurd. *See also Johnson v. Daley*, 117 F. Supp.2d 889 (W.D. Wis. 2000). Moreover, all of the authors of secondary authority that have analyzed the specific issue of the constitutionality of Section 1997e(d)(2) have concluded that the fee limitation provisions fail rational basis scrutiny. Lynn S. Branham, Note, *Toothless In Truth? The Ethereal Rational Basis Test And The Prison Litigation Reform Act's Disparate Restrictions On Attorney's Fees*, 89 Calif. L. Rev. 999, 1053 (2001); Karen M. Klotz, Note, *The Price Of Civil Rights: The Prison Litigation Reform Act's Attorney's Fee-Cap Provision As A Violation Of Equal Protection Of The Laws*, 73 Temp. L. Rev. 759, 794 (2000).

B. The United States' Contentions That The Fee Limitation Provisions Of The PLRA Are Rationally Related To The Governmental Interests Of Reducing The Filing Of "Marginal, Albeit Meritorious" Claims And Protecting The Public Fisc Are Meritless.

The United States contends that "the PLRA attorneys' fees cap is rationally related to the legitimate goal of reducing the number of 'marginal, albeit meritorious claims' " (U.S. Brief in Opposition at pp. 6-7). In furtherance of that contention, the United States argues that Congress can establish incentives to "attract attorneys to cases that involve serious, rather than de minimis injuries" (U.S. Brief in Opposition at p. 7) and that "[t]ying the amount of fees to the amount of recovery clearly accomplishes this objective" (*Id.*). The United States' arguments fail for multiple reasons. First, the United States assumes that "marginal, albeit meritorious claims" exist. They do not. And the United States has cited no authority to support its assumption. Nor has it bothered to define what a marginal, albeit meritorious claim is.

Even assuming, *arguendo*, that "marginal, albeit meritorious claims" exist, tying the amount of fees to the amount of recovery does not rationally further any governmental interest in reducing those types of claims. It is patently irrational for Congress to assume that the amount of recovery in a civil rights lawsuit is indicative of how substantial the lawsuit is. That is particularly true with respect to civil rights claims where the primary goal of litigation is not monetary relief, but in the victory itself and the deterrence of future civil rights violations. And that is the point this Court made in *City of Riverside v.*

Rivera, 477 U.S. 561, 574 (1986) ("we reject the notion that a civil rights action for damages constitutes nothing more than a private tort suit benefiting only the individual plaintiffs whose rights were violated. Unlike most private tort litigants, a civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms"); *see also Carey v. Piphus*, 435 U.S. 247, 266 (1978); Pet. App. 26a (Judge Daughtrey dissenting, "[t]he amount of a monetary damage award should not be equated with the significance of the rights secured or protected in any legal action").

The United States' attempt to distinguish *Rivera* fails (U.S. Brief in Opposition at p. 7-8). It argues that *Rivera* involved an issue of "statutory construction" (*Id.*). But United States offers no reason to ignore this Court's specific recognition of the purpose of civil rights claims (*Id.*). *Rivera's* holding about the purpose and value of civil rights claims is just as relevant to the resolution of this case as it was to the issue presented in *Rivera*.

Moreover, where, as here, a party seeks and obtains an award of punitive damages, the measure of success is not the amount of punitive damages obtained, but in deterring future violations by the tortfeasor *and others not party to the litigation. Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 266-270 (1981) ("Punitive damages by definition are not intended to compensate the injured party, but rather to punish the tortfeasor . . . , and to deter him and others from similar extreme conduct").

In addition, the government's purported interest in the reduction of the filing of "marginal, albeit meritorious

claims" fails rational basis review because the fee limitation provisions create no disincentive to the *filing* of marginal claims. As United States conceded, "the cap creates no barrier to filing a lawsuit; it simply limits the available recovery at end of a lawsuit" (U.S. Brief in Opposition at p. 11). Because no barrier to filing a lawsuit is effected by Section 1997e(d)(2), it follows that Section 1997e(d)(2) does not further any governmental interest in deterring the *filing* of allegedly "marginal" claims. Indeed, Section 1997e(d)(2) plays no role in a prisoner's analysis of whether to file a marginal or frivolous claim because no litigant under 42 U.S.C. § 1988 was entitled to recover attorney fees for such claims prior to the enactment of the PLRA.

Finally, the United States contends (erroneously) that the government's legitimate interest in protecting the public fisc is rationally related to the fee limitation provisions. This case is on all fours with this Court's decision in *Rinaldi v. Yeager*, 384 U.S. 305 (1966) (*see* Pet. 11-14). The United States' attempt to distinguish *Rinaldi* fails. It argues that "[t]he situation here is entirely different because there is a rational connection between a person's status as a prisoner and his propensity to file marginal and trivial lawsuits" (U.S. Brief in Opposition at 9). The United States' reasoning is flawed because its "similarly situated" argument is based on too broad a comparison of prisoners and nonprisoners, among other reasons. As the district court correctly concluded:

> The issue is whether *successful* prisoner civil rights litigants are similarly situated with successful nonprisoner civil rights litigants. Phrased in this manner, it is clear that the [sic]

> prisoners and nonprisoners are similarly situated: a prisoner's increased incentive or ability to file a frivolous [or marginal] lawsuit does not, as has been explained, relate in any way to either § 1988 or § 1997e(d)(2). Indeed, I can conceive of no distinction between these two classes for purposes of their entitlement to attorney fees under § 1988.

(Pet. App. 39a-40a) (emphasis in original). The United States' attempt to distinguish *Lindsey v. Normet*, 405 U.S. 56 (1972) fails for the same reasons.

C. The Issue Of The Constitutionality Of The 25 Percent Reverse Fee Portion of Section 1997e(d)(2) Is Properly Before This Court.

The United States contends that the issue of the constitutionality of the 25 percent reverse fee provision is not properly before this Court for two reasons: (1) it does not "fall within any of the questions presented by petitioner" and (2) "the court of appeals correctly refrained from addressing that issue" and petitioner lacks standing to challenge it (U.S. Brief in Opposition at pp. 10-11).

The issue of the constitutionality of the 25 percent reverse fee provision is clearly included in the questions presented (*see* Questions Presented, Pet. i). The Petition for Writ of Certiorari clearly states that one of the issues presented is:

> Whether § 1997e(d)(2) of the Prison Litigation Reform Act violates the Equal Protection Component of the Fifth Amendment of the United States Constitution by capping the maximum attorney fee award that prisoners may recover

> in civil rights actions, while leaving all other civil rights plaintiffs free to recover reasonable attorney fees under 42 U.S.C. § 1988.

Id. This question presented does not limit the issue to the 150 percent attorney fees cap portion of Section 1997e(d)(2), but rather references the *entire* provision, which includes the 25 percent reverse fee provision. Moreover, as with the 150 percent portion, the 25 percent reverse fee portion operates to cap "the maximum attorney fee award that prisoners may recover in civil rights actions," as stated in the question presented referenced above.

The United States' second contention fares no better. The Court of Appeals did not refrain from addressing the issue (*see* Pet. App. 12a-13a). Moreover, the Court of Appeals remanded the case to the district court for a "redetermination of fees under the PLRA" (Pet. App. 20a). Such a redetermination requires the district court to apply the 25 percent reverse fee portion of Section 1997e(d)(2) in determining the proper amount of attorney fees to award Petitioner. For this reason, Petitioner clearly has standing to challenge that portion of Section 1997e(d)(2).

Respectfully submitted,

DERIC J. BOMAR
VEDDER, PRICE, KAUFMAN & KAMMHOLZ
222 N. LaSalle, Suite 2600
Chicago, IL 60601
(312) 609-7726
Counsel of Record for Petitioner